

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
GREAT FALLS DIVISION

UNITED STATES OF AMERICA,

Plaintiff/Respondent,

vs.

EDWARD HENRY PRATT, a/k/a
Edward Young Running Crane,

Defendant/Movant.

Cause No. CR 12-82-GF-DLC
CV 14-41-GF-DLC

ORDER GRANTING § 2255 MOTION
AND DENYING CERTIFICATE OF
APPEALABILITY

FILED

JAN 15 2015

Clerk, U.S. District Court
District Of Montana
Missoula

This case comes before the Court on Defendant/Movant Edward Henry

Pratt's motion to vacate, set aside, or correct the sentence under 28 U.S.C. § 2255.

Pratt is a federal prisoner represented by counsel. A motion to reduce the sentence under 18 U.S.C. § 3582(c)(2) and Amendments 782 and 788 to the U.S.

Sentencing Guidelines is also pending.

Pratt's § 2255 motion alleged that his counsel in this case violated his Sixth Amendment right to the effective assistance of counsel by failing to investigate and challenge his criminal history calculation and by failing to consult with him regarding appeal. Mot. § 2255 (Doc. 159) at 5, 6. On January 12, 2015, the United States conceded the merit of the first claim. Answer (Doc. 175) at 3. As Pratt is entitled to be resentenced, *id.* at 4, both Pratt's second claim under 28 U.S.C. § 2255 and his motion for a sentence reduction under Amendment 782 are moot.

Accordingly, IT IS HEREBY ORDERED as follows:

1. Pratt's motion to vacate, set aside, or correct the sentence under 28 U.S.C. § 2255 (Doc. 159) is GRANTED as to his first claim for relief.

2. The Judgment entered on June 17, 2013 (Doc. 150), is VACATED.

3. Pratt's motion to reduce the sentence under 18 U.S.C. § 3582(c)(2) and Amendments 782 and 788 to the United States Sentencing Guidelines (Doc. 165) is DISMISSED AS MOOT.

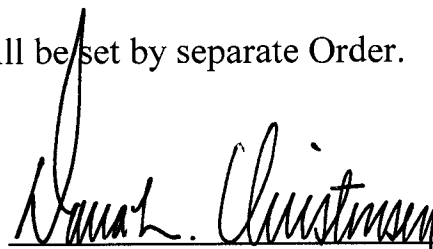
4. A certificate of appealability is DENIED as Pratt's success on his first claim renders his second claim moot.

5. The Clerk of Court shall terminate all pending motions in this matter and shall close the civil file by entering judgment, by separate document, in favor of Pratt and against the United States.

6. On or before **February 3, 2015**, counsel for Pratt shall notify the Court in writing whether Pratt waives his right to be present at his new sentencing hearing. *See* Fed. R. Crim. P. 43(c)(1)(B). If Pratt chooses to be present, the Court will order his transport to the District of Montana.

7. A new sentencing hearing will be set by separate Order.

DATED January 15, 2015.



Dana L. Christensen, Chief Judge
United States District Court